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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,563	03/23/2004	David L. Marvit	073338.0198 (04-50471)	4218
5073	7590	11/14/2006	FLA	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER LIANG, REGINA	
			ART UNIT	PAPER NUMBER
			2629	

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/807,563	MARVIT ET AL.	
	Examiner	Art Unit	
	Regina Liang	2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10 and 12-21 is/are rejected.
- 7) ☒ Claim(s) 4 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/23/04, 11/21/05</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 15-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 15-20 although written to include a computer readable medium, however for a logic, i.e. computer program, to be statutory subject it must be claimed as a computer program stored on a computer readable medium as set forth in page 52 of the Interim Guidelines, thus without such the claims are non-statutory in nature.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 5-8, 10, 12-15, 17, 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Mosttov et al (WO 03/001340 hereinafter Mosttov).

As to claims 1 and 21, Mosttov discloses a motion controlled handheld device (Fig. 1) comprising: a display having a viewable surface and operable to generate an image;

a gesture database maintaining a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device, the gesture database comprising a first gesture set and a second gesture set (a first class of gestures and a second class of gestures);

a motion detection module (inertial sensors in Fig. 2) operable to detect motion of the handheld device within three dimensions and to identify components of the motion in relation to the viewable surface; and

a control module (15 in Fig. 2) operable to: track movement of the handheld device using the motion detection module;

compare the tracked movement (inertial data from the inertial sensors) against the gestures in the first gesture set to determine matching gestures (see Fig. 4);

monitor user precision in indicating the matching gestures; determine that the user precision exceeds a precision threshold (page 10, lines 9-12 of Mosttov states “the second interpreters 54 identifies a direction and degree of “tilt”, e.g., the amount by which the electronic device is tilted away from the gravitational vector along one of the six semi-axes”; it is inherent that the motion discriminator 50 having a precision threshold to discriminate the motion of the device is a linear/planar motion or a tilt motion, when the degree of “tilt” exceeds the precision threshold, the tilt motion is identified by the second interpreters 54);

prompt the user to enable the second gesture set (“identify particular gesture from second class” in Fig. 4); and

in response to an appropriate user command, enable the second gesture set such that the controller compares subsequent motion of the device against the gestures in the second gesture set.

As to claim 3, Fig. 6 of Mosttov teaches the second gesture set comprises more gestures than the first gesture set (the 2nd class of gestures including 3rd and 4th class of gestures).

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As to claim 5, Mosttov teaches the gesture database defines each of the gestures using a sequence of acceleration (40 in Fig. 5).

As to claim 6, Mosttov teaches the appropriate user command is a selected on of movement of the device matching to a particular gesture and a non-motion user input.

As to claim 7, Fig. 5 of Mosttov teaches using three accelerometers (40) to detect acceleration along three axes, and the motion detection module is operable to detect motion of the device using accelerations measured by the three accelerometers.

Claims 8, 10, 12-14, 15, 17, 19, 20, which are method claims corresponding to the above apparatus claims, are rejected for the same reasons as stated above since such method "steps" are clearly read on by the corresponding "means".

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 9, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosttov.

Although Mosttov is silent on the distinction of gestures within each set as claimed, however such would have been obvious to one of ordinary skill in the art at the time the invention was made since the complexity of each set of gestures is different from one another hence the distinctness between the gestures would also be different. That is, a second set having

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simple gestures while a first set has complex gestures, therefore the gestures in the second set would have less distinction between gestures as compared to the first gesture set.

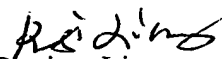
*Allowable Subject Matter*

7. Claims 4, 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina Liang whose telephone number is (571) 272-7693. The examiner can normally be reached on Monday-Friday from 8AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached on (571) 272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Regina Liang  
Primary Examiner  
Art Unit 2674

10/27/06